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JUL 29 2011
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The remaining allegations in Paragraph 3 are vague and ambiguous and therefore BNSF denies them.

4. With respect to the allegations in the first sentence of Paragraph 4, BNSF admits that substantial quantities of agricultural commodities, including wheat, barley and other commodities, are produced in the State of Montana. BNSF denies the remaining allegations in the first sentence of Paragraph 4 because it lacks knowledge or information sufficient to form a belief as to their truth. With respect to the second and third sentences of Paragraph 4, BNSF admits that it transports significant quantities of wheat produced in Montana to locations in the Pacific Northwest as well as other locations, that much wheat produced in Montana is transported by rail, that BNSF transports more wheat produced in Montana than any other rail carrier, and that some of the Montana-produced wheat transported by BNSF is subject to BNSF tariffs and rate publications. The remaining allegations in the second and third sentences of Paragraph 4 are vague and ambiguous and therefore BNSF denies them.

5. BNSF denies the allegations in the first sentence of Paragraph 5. With respect to the allegations in the second sentence of Paragraph 5, BNSF denies that its tariff rates and practices have not been subject to challenge by Montana wheat shippers in recent years and states that no Montana wheat shipper has actually filed such a challenge before the Surface Transportation Board ("STB") in recent years. BNSF denies the allegations in the third sentence of Paragraph 5, except that BNSF admits that significant expense can be incurred by shippers and railroads alike in reasonable rate and practice proceedings before the STB. BNSF further states that it has partnered with Montana grain growers, namely the membership of the Montana Grain Growers Association and the Montana Farm Bureau Federation, and instituted a mediation and arbitration rate dispute mechanism to provide a streamlined and less costly alternative to

resolving rail rate disputes where they exist. No entity has requested review of BNSF's published rates for 48-car shipments of Montana wheat under this mediation and arbitration mechanism.

6. Paragraph 6 states a legal conclusion to which no response is required.

7. Paragraph 7 states a legal conclusion to which no response is required.

8. With respect to the first sentence of Paragraph 8, BNSF admits that it has published rates that applied to shipments of Montana-produced wheat in 52 or more cars for approximately 30 years. With respect to the second sentence of Paragraph 8, BNSF admits that after it introduced rates for "shuttle" trains that transported Montana-produced wheat in 110 to 120 cars, BNSF continued to publish rates that applied to shipments of wheat in 52 to 110 cars. BNSF denies the remaining allegations in the first and second sentences of Paragraph 8. BNSF admits the allegations in the third and fourth sentences of Paragraph 8.

9. With respect to Paragraph 9, BNSF admits that it currently publishes rates for "shuttle" trains that transport wheat in 110 to 120 cars, publishes rates that apply to 26-car shipments of wheat, and publishes rates applicable to single-cars (*i.e.* 1 to 23 cars) that transport wheat produced in Montana.

10. BNSF admits the allegations in Paragraph 10.

11. With respect to the first sentence of Paragraph 11, BNSF admits that its prior rates that were applicable to shipments of 52 to 110 cars of wheat and those applicable to shipments of 48-cars of wheat were expressed on a dollar per car basis. BNSF further states that the 52 to 110 car rates for wheat shipments were converted to 48-car rates for wheat shipments at the same dollar per car amount; the 52 to 110 car rates for wheat shipments are no longer published. BNSF denies the remaining allegations in Paragraph 11 and, specifically denies any implication

that the dollar per car rate for shipments of wheat should decline as the number of cars in the shipment is reduced.

12. With respect to Paragraph 12, BNSF admits that Montana grain elevators paid the same rate on a dollar per car basis under the 48-car per train rates that they paid under the 52 to 110 cars per train rates. For example, if the dollar per car rate was \$100 per car, the shipper would pay BNSF \$4800 for a 48-car train under the 48-car per train published tariff and would have paid BNSF \$5200 for a 52-car train under the 52 to 110 cars per train published tariff. BNSF denies the remaining allegations in Paragraph 12 and specifically denies any implication that Montana grain elevators were harmed by paying the same dollar per car rate under the 48-car per train tariff that they paid under the 52 to 110 cars per train tariffs.

13. BNSF denies the allegations in Paragraph 13.

14. The allegations in Paragraph 14 consist of broad generalities regarding a diverse population and therefore BNSF denies them. To the extent the allegations in Paragraph 14 relate to activities of 52-car elevators, BNSF further denies them because it lacks knowledge or information sufficient to form a belief as to their truth.

15. The allegations in first sentence of Paragraph 15 are vague and unintelligible and therefore BNSF denies them. BNSF denies the allegations in the second sentence of Paragraph 15 except that BNSF admits that the Uniform Rail Costing System (URCS) categorizes shipments based on the shipment's waybill into the following individual movement types, which can affect the resulting revenue to variable cost (R/VC): single carload movements (usually 1-5 units); multi carload movements (usually 6-49 units); and unit train movements (50-plus units).

16. BNSF denies the allegations in Paragraph 16, except that BNSF admits that the make-whole adjustment contained in the STB's current URCS methodology is intended to be a

cost allocation mechanism that attempts to allocate the relative expected efficiencies of shipments of differing numbers of cars. The movements not costed as unit trains, and therefore subject to some form of make-whole adjustment under the STB's current URCS methodology, are movements that are costed as either single carloads or multiple carloads.

17. The allegations in the first and second sentences of Paragraph 17 are vague and ambiguous and therefore BNSF denies them. BNSF denies the allegations in the third sentence of Paragraph 17.

18. BNSF denies the allegations in Paragraph 18.

19. BNSF denies the allegations in Paragraph 19, specifically denies the allegation that Montana grain elevators experienced rate increases when BNSF began to publish rates that applied to 48-car shipments of wheat (see BNSF's answer to Paragraph 12 above) and further denies any implication that BNSF's published rates for 48-car shipments of Montana wheat are unreasonable.

20. BNSF denies the allegations in Paragraph 20.

21. With respect to the first sentence of Paragraph 21, BNSF admits that it has conducted tutorials for Montana grain producers, at their request, that, among other things, assisted them in calculating the R/VCs under the URCS costing model for 48-car shipments of wheat. BNSF denies the remaining allegations in the first sentence of Paragraph 21. The allegations in second sentence of Paragraph 21 are vague and unintelligible and therefore BNSF denies them.

22. BNSF denies the allegations in Paragraph 22.

23. BNSF denies the allegations in Paragraph 23 because it lacks knowledge or information sufficient to form a belief as to the truth of allegations relating to other railroads. BNSF further specifically denies the allegation that BNSF is “gaming” the system.

24. With respect to Paragraph 24, BNSF admits only that in the circumstance where a Montana short line railroad functions as a handling carrier for BNSF, BNSF has control over the pricing of that Montana short line railroad. BNSF denies the remaining allegations in Paragraph 24.

25. BNSF denies the allegations in Paragraph 25.

26. BNSF denies the allegations in Paragraph 26.

27. With respect to Paragraph 27, BNSF admits only that its rates for 52 to 110 car wheat shipments increased more than its rates for shuttle train shipments of wheat over time. BNSF denies the remaining allegations of Paragraph 27 because it lacks knowledge or information sufficient to form a belief as to their truth.

28. BNSF denies the broad allegations in Paragraph 28 because it lacks knowledge or information sufficient to form a belief as to their truth.

29. BNSF denies the broad allegations in Paragraph 29 because it lacks knowledge or information sufficient to form a belief as to their truth. BNSF further denies any implication in the second sentence of Paragraph 29 that BNSF rail rates to Montana wheat producers have effectively gone up since BNSF ceased publishing rates that applied to trains transporting wheat in 52 to 110 cars and began publishing rates that apply to 48-car trains transporting wheat. As explained in Paragraph 12, Montana wheat producers paid the same rate on a dollar per car basis under both published rates.

30. BNSF denies the allegations in Paragraph 30.

31. BNSF denies the allegations in Paragraph 31.

32. With respect to the allegations in Paragraph 32, BNSF admits that it was knowledgeable that the change from 52-car rates to 48-car rates had an impact on the URCS costs associated with the 52-car and 48-car movements. The remaining allegations in Paragraph 32 are vague and ambiguous and therefore BNSF denies them.

33. The allegations in Paragraph 33 are vague and ambiguous and therefore BNSF denies them.

34. The allegations in Paragraph 34 are vague, ambiguous and speculative, and therefore BNSF denies them.

35. The first sentence of Paragraph 35 states a legal conclusion to which no response is required. BNSF denies the remaining allegations in Paragraph 35.

36. Paragraph 36 states legal conclusions to which no response is required. Nevertheless, BNSF denies the allegation in this paragraph that BNSF has engaged in any unreasonable practice in violation of the governing statute.

DEFENSES

1. The Complaint fails to state a claim that BNSF engaged in any unreasonable practice in violation of 49 U.S.C. § 10702 or any other provision of the governing statute.

2. The Complaint fails to state a claim that is ripe for consideration by the Board.

3. The Complaint fails for lack of case or controversy because it does not identify any party who has been injured by the challenged practice.

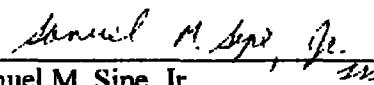
4. The Complaint fails to state reasonable grounds for investigation and action.

5. The relief sought in the complaint is unavailable, as it conflicts with BNSF's statutory right to set a rate or rates it elects on its own initiative, which includes the right to establish or cancel particular multiple car rates on its own initiative.

Respectfully submitted,

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July 29, 2010



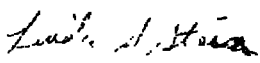
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ATTORNEYS FOR DEFENDANT

Certificate of Service

I hereby certify that on this 29th day of July, 2010, I have served a copy of the foregoing
BNSF Railway Company's Answer on the following by hand-delivery:

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